IN THE HUMAN RIGHTS REVIEW TRIBUNAL [2019] NZHRRT 13

Reference No. HRRT 036/2013

UNDER THE PRIVACY ACT 1993

BETWEEN THE DIRECTOR OF HUMAN RIGHTS PROCEEDINGS

PLAINTIFF

AND CAMERON JOHN SLATER

DEFENDANT

AT AUCKLAND

BEFORE:
Mr RPG Haines ONZM QC, Chairperson
Ms GJ Goodwin, Member
Mr RK Musuku, Member

REPRESENTATION:
Mr SRG Judd for plaintiff
Mr CJ Slater in person assisted by Mr D Nottingham on 2 February 2015

DATE OF HEARING: 28 and 29 October 2014 and 2 February 2015

DATE OF LAST SUBMISSIONS: 1 and 3 March 2015 (Mr Slater)
4 March 2015 and 7 March 2019 (Plaintiff)

DATE OF DECISION: 12 March 2019

DECISION OF TRIBUNAL[1]

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[1] [This decision is to be cited as: *Director of Human Rights Proceedings v Slater* [2019] NZHRRT 13]

INTRODUCTION

The issue

[1] Mr Slater operates a blog on the internet which he calls Whale Oil (www.whaleoil.co.nz). At issue in these proceedings is an allegation by the Director of Human Rights Proceedings (Director) that between 1 May 2012 and 7 October 2012 Mr Slater published on that website and on three others at least 46 documents containing personal information about Mr Matthew Blomfield, a business consultant who lives in Auckland. The documents were published as supposed justification for blogs written by Mr Slater for his website and in which he accused Mr Blomfield of dishonesty, theft, bribery, deceit, perjury and other criminal conduct. It was variously asserted Mr Blomfield was a "psychopath", that he loves extortion and is a pathological liar. Another said "Drugs, fraud, extortion, bullying, corruption, collusion, compromises, perjury, deception, hydraulic-ing – its all there". There was also reference to "a network of crooks".

[2] The Director's case is that the disclosures breached information privacy principle 11 (IPP 11), caused significant emotional harm to Mr Blomfield and thereby interfered with his privacy. Mr Slater's defence is that he is a news medium and therefore exempt from the Privacy Act 1993 because publication of Mr Blomfield's personal information was a news activity as defined in s 2(1) of that Act. Mr Slater does not dispute publication on the Whale Oil website or on www.scribd.com. Nor does he rely on any of the permitted exceptions to IPP 11.

[3] The issue in these proceedings is whether in relation to any or all of the disclosures of Mr Blomfield's personal information Mr Slater was a news medium whose business, or part of whose business, consisted of a news activity as defined in the Privacy Act, s 2(1).

Civil judgment as evidence

[4] It is relevant to record Mr Blomfield has sued Mr Slater claiming he has been defamed by the material published on the Whale Oil website. In the context of those proceedings Mr Blomfield sought an order under the Evidence Act 2006, s 68(2) that Mr Slater be compelled to disclose the identity of the informants from whom he received Mr Blomfield's personal information. In *Slater v Blomfield* [2014] NZHC 2221, [2014] 3 NZLR 835 Asher J held in relation to s 68(1):

> **[4.1]** Mr Slater was a journalist within the meaning of the Evidence Act, s 68(5). See the judgment at [81] to [84].
>
> **[4.2]** A website blog can be a news medium within the meaning of the Evidence Act, s 68(5) if it desseminates news which involves provision of new information to the public about recent events of interest to the public. See [52], [54] and [65].

[5] However, on the facts, Asher J made an order under the Evidence Act, s 68(2) that the protection given by subs(1) to journalists' sources not apply in the context of the defamation proceedings brought by Mr Blomfield.

[6] The evidence given by Mr Slater to the High Court addressing the issue whether he is a journalist and a news medium for the purposes of the Evidence Act, s 68 was not filed by Mr Slater before the Tribunal in the present proceedings. Instead, at the hearing which commenced before the Tribunal on 28 October 2014 Mr Slater relied on the High Court judgment which had been delivered one month earlier on 12 September 2014. Mr

Slater submitted the findings made by Asher J were binding on the Tribunal. This was a problematical submission given the Evidence Act, s 50(1) expressly provides to the contrary:

> **50 Civil judgment as evidence in civil or criminal proceedings**
>
> (1) Evidence of a judgment or a finding of fact in a civil proceeding is not admissible in a criminal proceeding or another civil proceeding to prove the existence of a fact that was in issue in the proceeding in which the judgment was given.
> (1A) Evidence of a decision or a finding of fact by a tribunal is not admissible in any proceeding to prove the existence of a fact that was in issue in the matter before the tribunal.
> (2) This section does not affect the operation of—
> (a) a judgment *in rem*; or
> (b) the law relating to *res judicata* or issue estoppel; or
> (c) the law relating to an action on, or the enforcement of, a judgment.

[7] When this provision was drawn to the attention of Mr Slater he responded that as a litigant in person he could not be expected to know legal complexities.

[8] It was this misunderstanding of the law which led the Tribunal to grant Mr Slater leave to reopen his case and to file evidence to support his defence that for the purposes of the Privacy Act also he was a news medium and that the publication of Mr Blomfield's personal information by him (Mr Slater) was a news activity for the purposes of that Act. The Tribunal's reasons for that decision are recorded in the *Minute* [2014] NZHRRT 53 (29 October 2014):

> **The decision to adjourn**
>
> **[17]** The frustration expressed by Mr Judd in his submissions is understandable. From the time of the first teleconference Mr Slater has had at least seven months to prepare his case and two timetable opportunities to file his evidence. While he is a litigant in person his litigation experience has been expanding both in the High Court and in the District Court. The rules regarding the need to file evidence can hardly be new to him. Nevertheless, the remedies sought by the Director are of a substantial nature (eg damages of $50,000 for emotional harm, the practical equivalent of a restraining order, a cease and desist order and a training order).
>
> **[18]** What the Tribunal cannot overlook is the need to comply with s 105 of the Human Rights Act 1993 which is incorporated into proceedings under the Privacy Act by s 89 of the latter Act. It requires the Tribunal to act according to the substantial merits of the case without regard to technicalities and in exercising its powers and functions the Tribunal must (inter alia) act in a manner that is fair and reasonable:
>
> > **105 Substantial merits**
> >
> > (1) The Tribunal must act according to the substantial merits of the case, without regard to technicalities.
> > (2) In exercising its powers and functions, the Tribunal must act—
> > (a) in accordance with the principles of natural justice; and
> > (b) in a manner that is fair and reasonable; and
> > (c) according to equity and good conscience.
>
> **[19]** The following factors, taken cumulatively, led the Tribunal to conclude Mr Slater should be given a final opportunity to file evidence to support the defence advanced in his closing submissions:
>
> > **[19.1]** The proposed evidence goes directly to the heart of the primary issue in the case, namely whether Mr Slater was at the time a "news medium" carrying out a "news activity".
> >
> > **[19.2]** It would be artificial to determine the case by ignoring Mr Slater's assertion that there is evidence showing he was a news medium.

> **[19.3]** Mr Slater is a litigant in person. Even a fundamental error by him (failing to file evidence) cannot deflect the Tribunal from the statutory obligation to decide the case on its substantial merits rather than on technicalities. The Tribunal's decision may well be seen by some as an over-generous indulgence but no real unfairness or prejudice to the Director by granting the adjournment has been identified.
>
> **[20]** In these circumstances it was decided that Mr Slater should be given a final opportunity to file all evidence on which he intends relying when advancing his defence. As stressed at the hearing, "all evidence" means "everything". Because Mr Slater has not in the past adhered to timetable directions and because the adjournment application was made in the last minute of the eleventh hour, such evidence as he files must be in the form of a sworn affidavit or affidavits. Hopefully this will reinforce the seriousness of the situation in which Mr Slater finds himself and the need for both the Director and the Tribunal to know that whatever Mr Slater's final position is with regard to the evidence, he is able to swear to the truth of his assertions.

[9] Subsequently Mr Slater filed affidavits sworn on 6 November 2014 and 17 December 2014 respectively.

[10] Unfortunately this evidence did not fully or even partially replicate the evidence filed by Mr Slater in the proceedings heard by Asher J. When at the resumed hearing before the Tribunal on 2 February 2015 this was drawn to the attention of Mr Slater he once again responded that as a lay litigant he believed he could rely on the High Court judgment as proof of any fact in issue before the Tribunal.

[11] The Director opposed admission of the High Court judgment as evidence but submitted, in the alternative, the Tribunal should apply the findings made by Asher J when concluding public interest factors required the journalist's exemption not protect Mr Slater's blogs.

[12] We have determined that the evidence of Mr Slater as recorded in the judgment given by Asher J is to be admitted in evidence before the Tribunal. Our reasons follow:

> **[12.1]** Prima facie the prohibition on the admission of the High Court judgment as evidence applies. The Evidence Act applies to the Tribunal in the same manner as if the Tribunal were a court. See the Human Rights Act 1993, s 106(4).
>
> **[12.2]** However, under the Human Rights Act, s 106(1)(d) the Tribunal has an overriding discretion to receive any evidence which may, in its opinion, assist it to deal effectively with the matter before it, whether or not it would be admissible in a court of law:
>
> > **106 Evidence in proceedings before Tribunal**
> >
> > (1) The Tribunal may—
> > (a) call for evidence and information from the parties or any other person:
> > (b) request or require the parties or any other person to attend the proceedings to give evidence:
> > (c) fully examine any witness:
> > (d) receive as evidence any statement, document, information, or matter that may, in its opinion, assist to deal effectively with the matter before it, whether or not it would be admissible in a court of law.
> > (2) The Tribunal may take evidence on oath, and for that purpose any member or officer of the Tribunal may administer an oath.
> > (3) The Tribunal may permit a person appearing as a witness before it to give evidence by tendering a written statement and, if the Tribunal thinks fit, verifying it by oath.
> > (4) Subject to subsections (1) to (3), the Evidence Act 2006 shall apply to the Tribunal in the same manner as if the Tribunal were a court within the meaning of that Act.
>
> **[12.3]** Of this section the Tribunal in *DML v Montgomery* [2014] NZHRRT 6 (12 February 20214) at [50] and [51] stated:

> **[50]** The Tribunal's discretion under s 106(1)(d) of the HRA to receive otherwise inadmissible evidence is a wide one and it is not appropriate to lay down any prescriptive rule for the exercise of that discretion. This much is clear from the language of the provision which emphasises the case-specific context in which the exercise of the power arises. The issue is whether the challenged evidence will assist the Tribunal to deal effectively with the matter before it. It must also be borne in mind that the stated purpose of the HRA, as found in the Long Title, is to provide better protection of human rights in New Zealand. That purpose must not be overlooked when assessing whether the evidence will assist the Tribunal to deal effectively with the matter before it. As both this provision and the judgment in *Carlyon Holdings Ltd v Proceedings Commissioner* at 533 recognise, a technical approach by the Tribunal to evidentiary matters is inappropriate.
>
> **[51]** ... Section 106(1)(d) of the HRA is not a secondary or fall-back provision which comes into play only if the challenged evidence is inadmissible under the Evidence Act 2006. Rather it is the primary provision under which admissibility decisions are made. This is clear from s 106(4) which stipulates that the Evidence Act applies to the Tribunal "subject to" s 106(1) of the HRA. In turn s 5(1) of the Evidence Act states that if there is any inconsistency between the provisions of that Act and any other enactment the provisions of that other enactment, prevail unless the Evidence Act provides otherwise.

[12.4] Section 106 of the Human Rights Act applies to proceedings under the Privacy Act by virtue of s 89 of the latter Act. The Tribunal's approach to evidence in proceedings before it has most recently been explained in *Taylor v Corrections (Admissibility of Evidence)* [2016] NZHRRT 10 at [12] to [17] and in *Taylor v Corrections (No. 2)* [2018] NZHRRT 43 at [11] to [18]. No purpose would be served by repeating or summarising what is said there. It is sufficient to note that if there is any inconsistency between the provisions of the Human Rights Act, s 106 and any provisions of the Evidence Act, the provisions of the Human Rights Act prevail. See the Evidence Act, s 5(1).

[12.5] Mr Slater wants the judgment admitted and the Director, if unsuccessful in opposing admission, also wants the judgment admitted for certain purposes. In these circumstances we can see no real prejudice to either party by admitting the High Court judgment pursuant to the Human Rights Act, s 106(1)(d) subject to all questions of weight.

[12.6] In the context of the indistinguishable provisions of the Lawyers and Conveyancers Act 2006, s 239 the Full Court in *Orlov v New Zealand Lawyers and Conveyancers Disciplinary Tribunal* [2014] NZHC 1987, [2015] 2 NZLR 606 at [78] to [80] held High Court judgments can be accepted by the New Zealand Lawyers and Conveyancers Disciplinary Tribunal as evidence notwithstanding the Evidence Act, s 50. Thereafter it is a question of weight to be given to the conclusions contained therein. The decision in the present case to admit in evidence the judgment of Asher J is therefore supported by authority.

[13] On the question of weight, it must be noted that while Mr Slater was granted leave to appeal against the decision of Asher J (see *Slater v Blomfield* [2015] NZCA 240), he was also required to pay security for costs by 28 August 2015. An application by Mr Slater for leave to adduce further evidence was dismissed in *Slater v Blomfield* [2015] NZCA 562. For reasons not known to the Tribunal, the appeal was never heard.

Delay

[14] The reasons for the long delay in publishing this decision are explained in *Wall v Fairfax New Zealand Ltd (Delay)* [2017] NZHRRT 8. It was not until enactment of the Tribunals Powers and Procedures Legislation Act 2018 that s 99AA of the Human Rights Act was on 14 November 2018 inserted to allow the Governor-General to appoint one or

more Deputy Chairpersons of the Tribunal. As at the date of publication of this decision no such appointments had been made.

[15] The delay by the Tribunal is regretted and an apology is made to the parties.

Further submissions

[16] By *Minute* dated 21 February 2019 the Tribunal offered the parties an opportunity to update their submissions and to comment on the Tribunal's research material. Further submissions were filed by the Director on 7 March 2019. Those submissions have been taken into account in the preparation of this decision. No additional submissions have been filed by Mr Slater but on 1 March 2019 notice was given to the Tribunal that on 27 February 2019 Mr Slater was adjudicated bankrupt on his own application under the Insolvency Act 2006, s 47. However, for the reasons explained in *Fehling v Appleby (Bankruptcy)* [2014] NZHRRT 17 at [7] to [12], s 76 of that Act is not engaged and the adjudication does not bring the present proceedings to an end.

THE EVIDENCE

[17] Mr Blomfield was the only witness called by the Director. He gave oral evidence and was cross-examined by Mr Slater. The only witness for the defence was Mr Slater but as he was not required by the Director for cross-examination on his affidavits sworn on 6 November 2014 and 17 December 2014 or on the evidence recorded in the judgment of Asher J, Mr Slater did not give oral evidence.

[18] In the result there was little dispute as to the facts relevant to the issues to be determined by the Tribunal.

[19] We begin with a brief summary of Mr Blomfield's evidence.

The evidence of Mr Blomfield

[20] Mr Blomfield is a self-employed consultant. Over a ten year period he used a hard drive to back up his business emails, documents and other personal information. Without his authority that hard drive came into the possession of Mr Slater in or before May 2012 and it was from this hard drive that Mr Slater obtained the personal information about Mr Blomfield which Mr Slater then published on his website with his blog.

[21] Mr Slater denies having been a party to the unlawful taking of the hard drive. But as to this we agree with the conclusion reached by Asher J at [134] of his judgment that:

> **[134]** In the ordinary course of events persons do not legitimately come by the personal hard-drive and filing cabinets of other persons. Even if Mr Slater was not party to any illegality, it seems likely that the information was obtained illegally by the sources, and this diminishes the importance of protecting the source. There is less public interest in encouraging persons who are in a private dispute with others from going to the media with unlawfully obtained confidential material to hurt them. This material prima facie is in that category. This is a factor which supports a public interest in disclosure, and that further diminishes the public interest in protecting the source.

[22] Mr Blomfield said that between May 2012 and October 2012 at least 46 of his documents containing his personal information were published by Mr Slater. The documents comprised emails between Mr Blomfield and business associates, correspondence between lawyers and Mr Blomfield, bank statements showing payments

to Mr Blomfield, photographs of Mr Blomfield and a police adult diversion scheme form for Mr Blomfield.

[23] The Director's case, as set out in the statement of claim, is that the disclosures fell into four categories:

> **[23.1]** On at least 25 occasions between 14 May 2012 and 25 May 2012, Mr Slater disclosed documents containing personal information about Mr Blomfield on the website www.docshut.com.
>
> **[23.2]** On at least 22 occasions between 6 May 2012 and 7 October 2012, Mr Slater disclosed documents containing personal information about Mr Blomfield on the website www.scribd.com.
>
> **[23.3]** On at least 11 occasions between 6 May 2012 and 10 July 2012, Mr Slater disclosed documents containing personal information about Mr Blomfield on the website www.slashdocs.com.
>
> **[23.4]** On at least 25 occasions between 1 May 2012 and 6 June 2012, Mr Slater disclosed documents containing personal information about Mr Blomfield on the website www.whaleoil.com.

[24] Mr Blomfield told the Tribunal he did not authorise publication of his information on Whale Oil or on any other website. He described the fallout of the disclosures as including:

> **[24.1]** As a consequence of his email address, phone number and other personal details being disclosed online, along with many of his documents, he received a number of text messages that threatened him and his family.
>
> **[24.2]** He began to have difficulty sleeping and would struggle to fall asleep until well after midnight.
>
> **[24.3]** He became concerned about the safety of his family comprising his partner and two young children. His partner was badly affected by this loss of the family's privacy and now feels uncomfortable in any situations involving large groups of people.
>
> **[24.4]** His partner began double-checking doors and windows every night, prompting Mr Blomfield to install additional home security measures including gates and security lighting.
>
> **[24.5]** For at least the first eighteen months after the disclosures began his partner would not stay home alone. Mr Blomfield was forced to work from home so that he could be present to support his wife during the day and to drop off and pick up the children from school.
>
> **[24.6]** On 12 April 2014 he was attacked at his home by an unknown person. Mr Blomfield concedes this incident (the subject of a Police prosecution) cannot be shown to have been caused by Mr Slater's blogging activities.
>
> **[24.7]** Mr Blomfield drastically changed his personal appearance so that he would be unrecognisable from the photographs Mr Slater posted on Whale Oil.
>
> **[24.8]** The disclosures have had an immense impact on his life.

The evidence of Mr Slater

[25] Mr Slater does not deny responsibility for writing and publishing his blog. The only defence raised is that he is exempt from the Privacy Act and in particular from the information privacy principles, particularly IPP 11 which prohibits an agency from disclosing personal information about a person unless the agency believes on reasonable grounds that one of the exceptions permitted by IPP 11 applies.

[26] Mr Slater acknowledges that if he fails to establish he is a news medium and that the blogs were news activity, none of the exceptions in IPP 11 apply.

[27] Mr Slater admits all of Mr Blomfield's documents published on the Whale Oil website had been taken from the hard drive earlier referred to. The documents were used to illustrate blogs written by Mr Slater and published on his website. The documents were either linked to or embedded in the Whale Oil site with the blog so that they were available to persons who read the blog. The documents so linked or embedded were placed by Mr Slater on scribd.com.

[28] Mr Slater denies placing any of the documents on docshut.com and on slashdocs.com. We note the Director cannot prove to the contrary.

[29] In the result three of the alleged publications pleaded in the statement of claim are not proved, being items numbered as 13, 16 and 20 in the schedule to the statement of claim. This reduces the Director's case from 46 documents to 43.

[30] The assertion by Mr Slater that all of the documents were published as integral parts of particular blogs is significant in the context of his defence that the publications were a news activity. This is because there is a shortfall in his evidence. Of the 46 disclosures listed in the schedule to the statement of claim, only in respect of 12 was the Tribunal provided with a copy of the blog as well as Mr Blomfield's documents. If we hold (as we do) that application of the news medium exemption must be determined in the context of the particular blog, Mr Slater is in some difficulty because of the 46 documents taken from Mr Blomfield's hard drive, the Tribunal has only 12 of the related blog commentaries by Mr Slater. Mr Slater explained this shortfall came about because by the time the Director came to download evidence from Whale Oil and scribd.com, he (Mr Slater) had already taken down a number of blogs in the hope such removal would assist settlement of Mr Blomfield's various legal proceedings against Mr Slater. In the result Mr Slater's news medium defence is necessarily confined to 12 blogs only.

[31] We address now the primary issue in these proceedings, being the application to Mr Slater of the news medium and news activity exemption to the Privacy Act.

APPLICATION OF THE PRIVACY ACT TO MR SLATER – NEWS MEDIUM AND NEWS ACTIVITY

[32] The 12 information privacy principles apply only to an entity which is defined as an "agency" by s 2(1) of the Privacy Act. Only an agency as so defined can interfere with the privacy of an individual in terms of s 66 of the Act and it is only in respect of such interference by such agency that the Tribunal has jurisdiction under s 85 to grant a remedy.

[33] The definition of "agency" in s 2(1) of the Act is therefore of critical importance to the jurisdiction of the Tribunal. The definition of the term is broad. Every person and entity

in both the public and private sectors is included unless one of the stipulated exemptions applies. There are 14 such exemptions. The exemption relevant to the present case relates to the news activities of a news medium:

> **agency—**
> (a) means any person or body of persons, whether corporate or unincorporate, and whether in the public sector or the private sector; and, for the avoidance of doubt, includes a department; but
> (b) does not include—
> ...
> (xiii) in relation to its news activities, any news medium; or

[34] The terms "news medium" and "news activity" are, in turn, defined as follows:

> **news medium** means any agency whose business, or part of whose business, consists of a news activity; but, in relation to principles 6 and 7, does not include Radio New Zealand Limited or Television New Zealand Limited
>
> **news activity** means—
> (a) the gathering of news, or the preparation or compiling of articles or programmes of or concerning news, observations on news, or current affairs, for the purposes of dissemination to the public or any section of the public:
> (b) the dissemination, to the public or any section of the public, of any article or programme of or concerning—
> (i) news:
> (ii) observations on news:
> (iii) current affairs

[35] Mr Slater's defence is that when he published Mr Blomfield's personal information he (Mr Slater) was a news medium and that the blogs relating to Mr Blomfield were a "news activity". He relies heavily on the findings made by Asher J at [81] to [84] that at the time he (Mr Slater) was a journalist for the purpose of the Evidence Act, s 68, a provision which in certain circumstances will shield a "journalist" from disclosing the identity of his or her sources.

[36] But as to this the terms "journalist" and "news medium" are separately defined in s 68(5) of the Evidence Act itself. The term journalist has no counterpart in the definition section of the Privacy Act and that Act's definition of "news medium" is different to the one in s 68(5) of the Evidence Act, a point regarded by Asher J at [43] fn 26 as having some significance. In these circumstances the Evidence Act provisions provide little assistance to the interpretation of the relevant Privacy Act provisions.

[37] For the Director it was submitted the Privacy Act exemption recognises the important functions of the news media but a news medium should not use its exemption from the Privacy Act to cause unjustifiable harm. The media exemption should be restricted to media subject to a code of ethics and an independent complaints body.

A reverse onus of proof

[38] Before addressing the statutory interpretation issues raised by Mr Slater's defence it is necessary to note a reverse onus of proof applies. See the Privacy Act, s 87:

> **87 Proof of exceptions**
>
> Where, by any provision of the information privacy principles or of this Act or of a code of practice issued under section 46 or section 63, conduct is excepted from conduct that is an interference with the privacy of an individual, the onus of proving the exception in any proceedings under this Part lies upon the defendant.

[39] However, the facts being clear, nothing turns on the onus of proof.

INTERPRETATION

Ambulatory interpretation

[40] A recurring theme in the Director's oral submissions was that when the Privacy Act was enacted in 1993 Parliament did not have blogs in mind and for that reason the media exemption did not apply to them. The benefit of the exemption only attaches to forms of media subject to statutory or voluntary regulation which prescribes minimum standards regarding accuracy, balance, fairness and associated ethics.

[41] The point has perhaps been best expressed by the Law Commission in *The News Media Meets 'New Media': Rights, Responsibilities and Regulation in the Digital Age* (NZLC, R128, March 2013) in the Summary of its Report at 3 and 4. These passages also explain the important role news media have in a democratic society and why certain privileges are enjoyed by the media. These are significant points:

> 1. This report is about the different rights and responsibilities which apply to communicators in an era when anyone with an internet connection has the potential to broadcast to the world.
>
> 2. All those who publish in New Zealand, whether as individuals or as entities such as news media companies, are subject to the basic legal constraints which protect citizens' interests in their reputation, privacy, personal safety, and right to a fair trial. Within these legal constraints, citizens are free to exercise their freedom of expression, including publishing views which are extreme, false, misleading and/or offensive to some.
>
> 3. The news media, however, have additional rights and responsibilities, reflecting the vital role they have played as a conduit of reliable information about what is happening in the world and as a means of holding power to account.
>
> 4. To facilitate the news media in carrying out these core democratic functions, the law grants these publishers certain legal privileges and exemptions not available to ordinary citizens. For example under the Criminal Procedure Act 2011 the news media have a statutory right to remain in a closed court and to appeal suppression orders. They alone have the right to communicate electronically from the court. The news media are specifically exempt from the information privacy principles in the Privacy Act 1993, and certain provisions of the Electoral Act 1993, the Human Rights Act 1993 the Fair Trading Act 1986.
>
> 5. In turn, the news media are subject to additional standards, some enshrined in law, others by self-imposed professional and ethical codes, designed to ensure their privileges and exemptions are exercised responsibly; that the information they disseminate conforms to basic standards of accuracy and fairness; and that they are held accountable for any abuse of their power.
>
> 6. However, this system of statutory privileges, matched by countervailing responsibilities, evolved in an era when the public was largely dependent on the mainstream media as their only source of reliable news and information. It also developed at a time when "print" and "broadcast" media were two distinct entities, subject to different standards and forms of accountability based on the formats in which they distributed their news.
>
> 7. Neither of these assumptions holds true today. New Zealanders now have access to a plethora of news sources ranging from global media brands through to the spectrum of "new media" providers generating, aggregating, and commenting on news. Most significantly, the public are now able to generate, debate and distribute news and opinion themselves, without reliance on the mainstream media.
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> [Footnote citations omitted]

[42] While the task of the Law Commission was to make recommendations as to how the law should respond to these challenges, the task of the Tribunal is to interpret and apply the law as it currently stands.

[43] New media and blogging may well post-date enactment of the Privacy Act in 1993 but this is not a novel challenge for the law. The well-established common law principle now codified in the Interpretation Act 1999, s 6 is that statutes are to be applied to circumstances "as they arise":

> **6 Enactments apply to circumstances as they arise**
>
> An enactment applies to circumstances as they arise.

[44] The principle that a statute is "always speaking" applies unless the statute is one of the comparatively rare cases of an Act intended to be of unchanging effect. The distinction between the two categories of statutes and the "always speaking" principle were addressed by Elias CJ (dissenting) in *New Health New Zealand Inc v South Taranaki District Council* [2018] NZSC 59, [2018] 1 NZLR 948 at [284] to [286]:

> **[284]** Where statutes address and correct particular grievances, the historical context which provides the occasion for the legislation may be an important aid to its interpretation. But where statutes address contemporary issues as they arise, the principle of interpretation is that they are "always speaking". Such a statute exists "independently of the historical contingencies of its promulgation, and accordingly should be interpreted in the light of its place within the system of legal norms currently in force". The more modern language of the Interpretation Act retains this long-standing principle of interpretation in the requirement that statutes are to apply to "circumstances as they arise", one of the three "principles of interpretation" identified in Part 2 of the Interpretation Act 1999.
>
> **[285]** A statutory text that speaks to the present must, as Stephen Gageler says, be "necessarily influenced in its meaning by the contemporary statutory context in which it continues to speak":
>
> > So much is that taken for granted that it is almost never suggested that a frequently modified statute should be read other than as a coherent whole. There is not the slightest conceptual difficulty with the notion of subsequent legislative enactments expressly or by implication modifying existing statutory language. Words incorporated into a statute at a particular time are therefore not frozen at the point of incorporation but take (and can change) their meaning so as to best fit the changing statutory landscape.
>
> **[286]** Lord Steyn has pointed out that whether a court "must search for the historical or original meaning of a statute or whether it is free to apply the current meaning of the statute to present day conditions" is itself a matter of interpretation. The Local Government Act and the Health Act are not legislation which seek to correct particular problems in which the historical context helps in identifying the purpose. They are statutes which address contemporary needs. They must therefore be read in the light of developing principles of interpretation and the contemporary context of the common law and statutes into which they fit, as they exist at the time of application.
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> [Footnote citations omitted]

[45] The Privacy Act is unquestionably a statute which addresses contemporary needs and we will shortly return to the point that in its application to blogs and internet sites, it must be interpreted not only in terms of its text and purpose, but also within the context of related statutes and of the contemporary context of the common law, particularly the law of defamation.

[46] It will be seen that by application of these conventional statutory interpretation principles we have concluded Mr Slater was at the time a news medium but that his disclosure of Mr Blomfield's personal information was not a news activity.

Principles of interpretation

[47] The main guiding factors in statutory interpretation are text, purpose and context. See the Interpretation Act 1999, s 5:

5 Ascertaining meaning of legislation

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.
(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.
(3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

Purpose of the exemption

[48] Because the text of the Privacy Act plainly exempts news media from the Act in relation to news activity the focus must be on the purpose of the exemption.

[49] It is clear from the sources about to be referred to that the end sought to be achieved by the exemption was recognition of the important role news media play in the democratic process and in protecting the right to freedom of expression. In *The News Media Meets 'New Media': Rights, Responsibilities and Regulation in the Digital Age* (NZLC, R128, March 2013) the Law Commission at [3.13] to [3.16] referred to this role as a "quasi-constitutional" function of the news media. In the pre-internet age the press was regarded as the chief agency for instructing the public on the main issues of the day. Democratic society needs a clear and truthful account of events, of their background and their causes; a forum for discussion and informed criticism; and a means whereby individuals and groups can express a point of view or advocate a cause.

3.14 Alongside these obligations to provide the public with reliable and accessible sources of information, the press was also charged with being the public's "eyes and ears" and, most critically, using their privileged access to provide an independent watch-dog on the exercise of state and other seats of power. The expectation that the news media, in its varied forms, would perform these core democratic functions provided the rationale for their legal and organisational privileges and differentiated them from other purely commercial enterprises.

3.15 However, the news media's special freedoms were matched by countervailing responsibilities. Foremost among these was the requirement that the public must be able to rely on the truthfulness, or accuracy, of what they read. Fact and opinion needed to be clearly differentiated. And the public needed to be confident that the news media did not use its considerable power and influence to deliberately mislead or cause unjustifiable harm.

3.16 This, in crude terms, describes the social contract which was understood to exist between mainstream news media and the public it serves, and on whom it has relied for its commercial success.

[50] After addressing the step-change brought about by the digital revolution and the internet the Law Commission at [3.36] to [3.48] of the Report further concluded the changes had not eliminated the public's need for ready access to credible and authenticated sources of information about what is happening in their communities and the world at large:

3.42 But revolutionary as these changes are, they have not, in our view, eliminated the public's need for ready access to credible and authenticated sources of information about what is happening in their communities and the world at large. Nor have they eliminated the need for primary news gatherers – people and organisations who gather information in a reasonably dispassionate manner for the express purpose of disseminating that information to the public, rather than because they gain some personal, political or organisational advantage from doing so. Nor have they eliminated the public's need for fair and accurate reports of the activities of the private and public institutions whose decisions impact on the lives of ordinary citizens. Nor have they eliminated the need for the impartial scrutiny of Parliament, legislators and the courts.

[51] These conclusions have recently been reinforced in the United Kingdom by Dame Frances Cairncross in *The Cairncross Review: A Sustainable Future for Journalism* (12 February 2019) which examined (inter alia) why society should care about the disruption of journalism (and high-quality journalism in particular) by the internet and by the digital revolution. Of interest in the present context the *Cairncross Review* notes there are two areas of public-interest news that matter greatly. Both are essential in a healthy democracy. One is investigative and campaigning journalism, especially investigations into abuses of power in both the public and the private sphere. The second is what is described as the "humdrum task" of reporting on the daily activities of public institutions and the machinery of government and justice, particularly at local level, such as the discussions of local councils or the proceedings in a local court. Key findings made in Chapter 1 are:

> **[51.1]** Investigative journalism and democracy reporting are the areas of journalism most worthy and most under threat.
>
> **[51.2]** The reduction in public-interest reporting appears to reduce community engagement with local democracy (such as voter turnout) and the accountability of local institutions.

[52] It can be seen from these brief excerpts from the Law Commission report on new media and from the more recent *Cairncross Review* there are compelling reasons for the news medium exemption in the Privacy Act.

[53] The Privacy of Information Bill which became the Privacy Act 1993 did not provide an exemption for the news media but the press lobbied strongly against the Bill. The exemption for the news media (and Members of Parliament) was introduced by the Select Committee. See Bruce Slane *Necessary and Desirable: Privacy Act 1993 Review* (1998) at 24 and para [1.4.49]. During the Second Reading of the Bill the then Minister of Justice (Hon Douglas Graham) stated it was intended both exemptions be re-examined and the outcome of the periodic statutory reviews of the Privacy Act (see s 26) should be to gradually bring the media (and others) within the scope of the Act, given the importance to them of the proper handling of personal information. See (20 April 1993) 534 NZPD (Privacy of Information Bill – Second Reading, Hon Douglas Graham).

[54] Presently only the two State broadcasters (Radio New Zealand Ltd and Television New Zealand Ltd) remain subject to the IPP 6 and IPP 7 access and correction regimes and s 29(1)(g) of the Privacy Act makes provision for "a bona fide" news media journalist to protect his or her sources where an IPP 6 request is made to one of the two State broadcasters. While the Act does not define "journalist" or "bona fide news media journalist" the qualitative element introduced by the term "bona fide" is significant. We return to this point later.

[55] While in his 1998 *Necessary and Desirable: Privacy Act 1993 Review* at [1.4.50] to [1.4.52] the then Privacy Commissioner (Mr Slane) continued to support an exemption for the news media, he nevertheless expressed the view at [1.4.53] that a complete exemption is not the only approach which can be taken to reconciling the relevant competing human rights and public interests in issue.

[56] The Law Commission in its *Review of the Privacy Act 1993: Review of the Law of Privacy Stage 4* (NZLC, R123, 2011) did not recommend termination of the exemption. Rather the following points were made:

[56.1] The free flow of information through the media is vital to the life of a free and democratic society, and is supported by the protection of freedom of expression in the New Zealand Bill of Rights Act 1990. It is difficult to see how the media could perform this role effectively were it subject to the Privacy Act's principles. Those principles are ill-aligned to the media function. See [4.26].

[56.2] When the Privacy Act was enacted, it was reasonably clear that the news media exclusion applied to "traditional" media: newspapers, magazines, radio and television. Since then, however, there has been a proliferation of "new" media, mainly on the internet, including blogs, news sites, social networking sites, microblogging sites such as Twitter, and video-sharing sites such as YouTube. See [4.35].

[56.3] The definition of "news medium" should be limited to media that are subject to a code of ethics that deals expressly with privacy, and to a complaints procedure administered by an appropriate body. See [4.39] and Recommendation R38.

[57] This recommendation has not been taken up by government.

[58] The Law Commission returned to the point in its later Report in *The News Media Meets 'New Media': Rights, Responsibilities and Regulation in the Digital Age* (NZLC, R128, March 2013) at [3.62]. It proposed that accountability to a code of ethics be "hard-wired" into the statutory definition of the news media. It recommended at [3.101] to [3.102] that news media be defined by accountability criteria. The justification for this recommendation was earlier at [3.53] and [3.54] expressed in public interest terms: the provision to the public of a reliable and dispassionate source of information about what is happening in the world. Later the Law Commission listed its conclusions:

> 3.88 In our view, in this fluid environment of merged media content and providers, there remains a powerful public interest in explicitly recognising and protecting the type of communication whose purpose is to provide the public with a reliable and dispassionate source of information about what is happening in the world.
>
> 3.89 However, we are clear that this public interest does not lie in preserving an institution or entity – the mainstream media – but rather in protecting and promoting the core functions assigned to the fourth estate in a liberal democracy, irrespective of whether those functions are performed by established media, independent freelance journalists or citizen bloggers.
>
> ...
>
> 3.92 Anyone wishing to access the news media's privileges and exemptions under our proposed definition would be required to be accountable to a code of ethics and a complaints process. As discussed in chapter 2, these codes of ethics encapsulate the essence of journalistic practice, ensuring compliance with the universal principles of fairness and accuracy. By implication, only entities willing to be held accountable to these core principles will be able to satisfy the statutory criteria we are proposing.

[59] As to "news activity", the Law Commission in its earlier Issues Paper *Review of the Privacy Act 1993: Review of the Law of Privacy Stage 4* (NZLC, IP17, 2010) at [5.30] had expressed the view it would not be possible to define "news activity" with any greater precision than that achieved in the present Act and that the wording should be left as it is, leaving the Privacy Commissioner and the Tribunal to make judgment calls on a case by case basis:

> The question is whether it would be possible to define "news activity" with any greater precision. Given the increasingly unclear line between news and entertainment, and the uncertain boundaries of even the term "news" itself, that would be a very difficult undertaking. Any formulation would still leave much to judgment in marginal cases. Our preferred position,

> therefore, is to leave the present wording as it is, and allow the Privacy Commissioner (and in appropriate cases the Tribunal) to make judgment calls on a case-by-case basis.

[60] In the subsequent Report at [4.34] the Commission confirmed that clarifying the meaning of "news activity" was not necessary:

> The consensus among submitters was that the definition of "news activity" should remain unchanged, and we recommend accordingly. In most cases we think it will be clear whether or not a medium is engaged in news activity, and cases at the margins are unlikely to be assisted by any attempt at clarifying the boundaries of "news".

[61] More recently, the Privacy Bill which received its first reading on 10 April 2018 and which will repeal and replace the present Privacy Act 1993 proposes no material change to the definitions of agency, news medium and news activity.

Conclusions on the purpose of the exemption

[62] On the question of the purpose of the exemption our conclusions follow:

[62.1] The news medium exemption, while initially intended to be temporary, has proved to be an enduring feature of New Zealand's privacy legislation.

[62.2] The underlying statutory purpose of the news medium exemption is to recognise the importance of freedom of expression in the New Zealand Bill of Rights Act, s 14 and to protect the free flow of information through the news media in their news activity.

[62.3] As noted in *The Cairncross Review* at 17, there are two areas of public interest news that matter greatly. Both are essential in a healthy democracy. One is investigative and campaigning journalism, especially investigations into abuses of power in both the public and private sphere. The second is the more mundane task of reporting on the daily activities of the machinery of government and justice matters, particularly at local level.

[62.4] The public interest does not lie in preserving an institution or entity – the mainstream media – but rather in protecting and promoting the core functions assigned to the fourth estate in a liberal democracy, irrespective of whether those functions are performed by established media, independent freelance journalists or citizen bloggers.

[62.5] The exemption is not all-encompassing and open-ended. The definitions of news medium and news activity while broad, are not without limit. The underlying purpose of the exemption will largely determine those limits.

[62.6] While the media exercises the important function in a democracy of informing the citizen, it has the potential to behave unfairly, offensively or excessively by, for example, invading privacy, damaging reputations and conducting partisan campaigns. See Cheer *Burrows and Cheer: Media Law in New Zealand* (7th ed, LexisNexis, Wellington) at 799.

[62.7] The news media's privileges and exemptions must be exercised responsibly.

[62.8] It is not the purpose of the news medium exemption to shield a news medium from the Privacy Act where the agency fails to meet the standards of responsible news activity, including impartiality, accuracy and balance.

[62.9] A requirement of responsible journalism ties the privileges and exemptions of the media to the purposes for which they were intended. It ensures that those seeking to access the exemption from the Privacy Act in relation to news activity conduct themselves in a manner consistent with the purpose of the exemption. This ethical requirement is a justified limitation on the right to freedom of expression as are the law of defamation, the operation of the Broadcasting Standards Authority under the Broadcasting Act 1989 and the self-regulation of the print media through the Press Council.

[63] Our conclusion is that the considerable advantages which flow from the exemption have been conferred by Parliament for good reason but with the intent the exemption carry with it the responsibility not to abuse the exemption.

[64] We next address the key elements to the news media exemption, namely "news medium" and "news activity".

News medium – interpretation

[65] It is to be recalled the Privacy Act has its own definition of news medium:

> **news medium** means any agency whose business, or part of whose business, consists of a news activity; but, in relation to principles 6 and 7, does not include Radio New Zealand Limited or Television New Zealand Limited

[66] It is not clear whether the term "business" means no more than "activity" or whether it is intended there be a commercial element to that activity. The Director submitted a commercial element is required.

[67] The issue does not arise on the facts. This is because Mr Slater's consistent position both in the High Court and before the Tribunal has been that it was his intention to operate Whale Oil as a commercial entity and he has pointed to unchallenged evidence regarding the sale of advertising space. He also referred to his blog as having grown into a business which at that time employed two staff members. The Tribunal was not given any information as to the degree of commercial success enjoyed by Mr Slater but for the Director it was conceded it is not necessary for the purpose of the Privacy Act definition that the news medium be commercially successful.

[68] We accordingly find on the evidence that Mr Slater was at the relevant time operating a blog with a view to earning a living from it. If the definition requires a commercial element, such element was present to a sufficient degree. If, on the other hand, the definition requires "business" to be read as "activity", then clearly that requirement was met.

[69] The real issue in this case is whether the business consisted of a news activity. It is to that issue we now turn.

News activity – interpretation of "news"

[70] The Privacy Act provides a definition of "news activity" but not of "news" itself:

news activity means—

(a) the gathering of news, or the preparation or compiling of articles or programmes of or concerning news, observations on news, or current affairs, for the purposes of dissemination to the public or any section of the public:

(b) the dissemination, to the public or any section of the public, of any article or programme of or concerning—

(i) news:

(ii) observations on news:

(iii) current affairs

[71] There are inherent dangers in attempting to define that which itself is a definition. It is nevertheless necessary that the Tribunal explain its understanding of the meaning of the key term "news". In our view it is to be given its natural and ordinary meaning as explained in the *OED Online*:

> **Etymology:** Specific use of plural of new n., after Middle French *nouvelles* (see novel n.), or classical Latin *nova* new things, in post-classical Latin also news (from late 13th cent. in British sources), use as noun of neuter plural of *novus* new (compare classical Latin *rēs nova* (feminine singular) a new development, a fresh turn of events). Compare later novel n.
>
> **2.** The report or account of recent (esp. important or interesting) events or occurrences, brought or coming to one as new information; new occurrences as a subject of report or talk; tidings.
>
> **a.** ...
>
> **b.** ...
>
> **c.** As predicate: a person, thing, or place regarded as worthy of discussion or of reporting by the media.

[72] This meaning accords with what most people would understand to be meant by "news", particularly in the context of "news medium" and of "news activity". As noted by Ross Carter in *Burrows and Carter Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 309, "people should be entitled to rely on what they regard as an indisputably obvious meaning". This statement was cited with approval by Glazebrook J (dissenting) in *Wood-Luxford v Wood* [2013] NZSC 153, [2014] 1 NZLR 451 at [37] fn 44.

[73] In the analysis which follows reference will be made only to para (b) of the news activity definition because the complaint made by the Director is focused on the dissemination of Mr Blomfield's personal information, not on the para (a) gathering of news or the preparation or compiling of articles or programmes of or concerning news, or current affairs, for the purpose of dissemination to the public.

News activity – whether the personal information which is disclosed must be news, observations on news or current affairs

[74] There is an issue as to whether the personal information proposed to be disclosed must itself be news, observations on news or current affairs before the statutory exemption applies.

[75] In *Talley Family v National Business Review* (1997) 4 HRNZ 72 (CRT) (a decision which also adopted the dictionary definition of news) the Tribunal left open the question whether it was necessary to analyse the content of the personal information published by the National Business Review in its (annual) Rich List in order to determine whether it was news activity, or whether it was sufficient that the National Business Review published a

business weekly newspaper containing articles of or concerning general business activity. On either approach the news medium exemption applied.

[76] However, in *Wallingford v National Beekeepers Association of NZ* [2001] NZAR 251 (CRT) the defendant published as part of its activities a magazine called the *New Zealand Beekeeper*. The plaintiff claimed a series of letters to the editor were intended to damage his reputation and sought under IPP 6 information from the Association about the identity of the author of the letters. The Association claimed the protection of the news medium exemption. The Complaints Review Tribunal at 255 held that it was the publication as a whole (ie the journal, newspaper or magazine) which was under scrutiny, not the individual pieces within that publication and which contained the personal information. On that basis the letters to the editor could not be considered separately from the rest of the magazine even though it was only in those letters that the personal information was to be found.

[77] The issue raised by these two decisions is whether in terms of para (b) of the news activity definition the personal information which is disclosed (in prima facie breach of IPP 11) must qualify as news, observations on news or current affairs, or whether it is sufficient that the personal information be disseminated in a publication which contains unrelated news, observations on news or current affairs with no connection to the personal information. The point was neither raised nor addressed in *Lau v ACP Media Ltd* [2013] NZHC 1165 where proceedings brought by a litigant in person were summarily struck out by Associate Judge Faire.

[78] In our view the personal information must itself qualify as news, observations on news or current affairs before the news medium exemption applies. Our reasons follow:

> **[78.1]** The primary purpose of the Privacy Act is to protect the information privacy of individuals, or, to use the language of the Act, to protect information which is about an identifiable individual.
>
> **[78.2]** In defined circumstances that purpose yields to the greater public interest which recognises the gathering and dissemination of news, observations on news and current affairs is of paramount importance in a democracy and a right recognised by the New Zealand Bill of Rights Act, s 14. Unmodified application of the information privacy principles would substantially handicap a news medium. This explains why the exemption has endured notwithstanding the belief expressed by some during the Parliamentary debates that the exemption would be re-examined with a view to bringing the media within the scope of the Privacy Act 1993.
>
> **[78.3]** However, the fact that a news medium may establish that in one respect it engages in news activity (as defined in the Privacy Act) in relation to (say) national affairs does not confer a licence to publish the personal information of any person of its choosing who has no connection with or involvement in such national affairs. Nor can the exemption be claimed because by happenstance the personal information appears in the same publication or blog as news activity concerning unrelated national affairs.
>
> **[78.4]** The news media exemption and the New Zealand Bill of Rights Act do not confer a licence at large to publish an individual's personal information. The exemption from the Privacy Act has been granted for a purpose. Publication of

personal information which does not serve that purpose is not protected by the exemption.

[78.5] Where an agency publishes the personal information of an identifiable individual and claims the protection of the news medium exemption the question to be addressed is whether the publication of **that personal information** is a news activity. In the context of a complaint that there has been an interference with the privacy of an individual, it is necessary to focus on what has been said, written or done about the individual and his or her personal information.

[79] It is now necessary to address the question whether there is a requirement that the activity encompassed by paras (a) and (b) of the news activity definition must be carried out responsibly. That is, whether news activity is to be read as responsible news activity. This was not an issue addressed in *Dotcom v Attorney-General* [2014] NZHC 1343 and it is therefore not necessary that that decision be addressed.

News activity – whether required to be responsible news activity

[80] It is implicit the news medium exemption from the Privacy Act is matched by a countervailing responsibility on that medium to act ethically and to act in a manner that is consistent with the public interest in fair and accurate reporting of news, observations on news or current affairs. This follows from the fact the reach of the news medium exemption is restricted by the public interest it is intended to protect. If publication of the personal information lies outside that interest, the exemption does not apply.

[81] There are two aspects to the public interest. The first is the recognition the news media has a special legal status (as to which see the summary in the Law Commission Report *The News Media Meets "New Media"* at [2.1] to [2.24]) and that observance of the information privacy principles would severely inhibit the free-flow of information through the media. See the Law Commission *Review of the Privacy Act 1993: Review of the Law of Privacy Stage 4* (NZLC, R123, 2011) at [4.26]. The second is that the privileges and the exemption must be exercised responsibly by a news medium claiming immunity from the information privacy principles and exemption from respecting the protection of the personal privacy of others. The exemption was not granted to facilitate the making of extreme and vitriolic allegations of the kind described by Asher J at [118] or to disseminate false news:

> [118] The pleaded expressions of opinion of Mr Slater are extreme. He accuses Mr Blomfield amongst other things of the exploitation of trust involving children, and of being involved in wrongly changing the amounts shown as donations. It is said that he ripped off a charity, that he is a psychopath and that he loves extortion, that he is a pathological liar, that he launders money, and that he is part of a network of crooks.

[82] The reading into the news activity definition of a requirement to act responsibly simply gives effect to that which is already implicit in the Privacy Act. In the words of *Burrows and Carter Statute Law in New Zealand* at 320, one is just drawing out what is already implicit in the definition read in the context of the Act as a whole. Were the definition not to be so qualified the privileges and exemption granted to the news media in the public interest could be used as an engine of oppression, free of any countervailing duty to act responsibly.

[83] The duty to exercise the freedom granted by the exemption in a responsible manner is a proportionate response to the competing public interests, being the clash between the right to freedom of expression on the one hand and the promotion and protection of

individual privacy on the other. It is, in terms of the New Zealand Bill of Rights Act, s 5 a justified limitation on freedom of expression.

[84] The public interest factors at work are seen also in analogous statutory settings with similar outcomes framed in terms of what might loosely be called responsibility:

> **[84.1]** Any journalist from Radio New Zealand or from Television New Zealand who wishes to protect his or her sources of information must first show he or she is "a bona fide" news media journalist. See Privacy Act, s 29(1)(g). A qualitative assessment is required.
>
> **[84.2]** Whether journalists' sources are to be protected under the Evidence Act, s 68 also turns on public interest factors, a point underlined by Asher J in *Slater v Blomfield* at [129] and [149] when directing Mr Slater to disclose the identity of his informant:
>
> > **[149]** Mr Blomfield's application for an order under s 68(2) that s 68(1) is not to apply to Mr Slater is granted for these reasons:
> > (a) Having regard to the issues there is a public interest in disclosure of the identity of the informants.
> > (b) There are no likely adverse effects of the disclosure on the informants save the possibility of civil action against them by Mr Blomfield, which is not a significant factor.
> > (c) There is no wider public interest arising from any public importance of the issues or the persons involved, because (i) this arises from a private dispute, and a requirement to disclose is unlikely to have a chilling effect on other whistleblowers and informants who should not be discouraged from going to the media; (ii) the disclosures are extreme and vindictive and have the hallmarks of a private feud; (iii) the documents disclosed by the sources by providing Mr Blomfield's hard-drive and other documents appear to have been obtained illegitimately.
>
> **[84.3]** The Harmful Digital Communications Act 2015 enacted ten communication principles. Of particular relevance to the present case Principle 1 provides that a digital communication should not disclose sensitive personal facts about an individual. Principle 5 states a digital communication should not be used to harass an individual and Principle 7 states that a digital communication should not contain a matter that is published in breach of confidence. Section 40 of the Act also introduced into the information privacy principles (for the first time) the notion whether it would be "unfair or unreasonable" for personal information to be used or disclosed. Fairness and reasonableness are also at the heart of responsible journalism.

[85] Reading news activity as responsible news activity will ensure the exemption is aligned with these provisions. All Acts of Parliament must fit into the body of the law as a whole. It is therefore permissible in interpreting one Act to have regard to other legal rules, whether legislation or common law. See *Burrows and Carter Statute Law in New Zealand* at 267.

[86] As to the common law, in *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131 it was held a defence of responsible communication on matters of public interest is now available in defamation proceedings. This holding is of particular importance given the law of defamation and the protection of personal privacy interests are related. See for example the decision at [53]:

> **[53]** The law of defamation seeks to strike a just balance between two cherished rights – the right to protection of reputation (intimately related to the protection of personal privacy) and the right

to freedom of expression which includes the freedom to impart and receive information and ideas. Striking the balance is "a value judgment informed by local circumstances and guided by principle". [Footnote citations omitted]

[87] It is therefore appropriate that if at all possible, the qualitative standard we propose reading into "news activity" be tested against the standard which applies to the responsible communication defence in defamation law, a defence which recognises the role which bloggers can play in public discourse. Their contribution is sometimes for the good but at other times recklessness can lead to harm. All three members of the Court regarded the imposition of a responsibility requirement as highly desirable and a necessary safeguard for reputation and privacy rights. See [56](c):

> (c) The emergence of social media and the "citizen journalist" which has radically changed the nature of public discourse. Bloggers and those who comment on blogs, tweeters, and users of Facebook and other social media are modern phenomena largely unknown to the Court in *Lange*. While the mainstream New Zealand media may still be as responsible as the Court in *Lange* considered it was, the proliferation of unregulated bloggers and other commentators who can be reckless means that the imposition of a responsibility requirement is highly desirable and a necessary safeguard for reputation and privacy rights. It would also provide much needed clarity and certainty in an unregulated world. The other alternative would be to deny the defence altogether to anyone other than the mainstream media but we do not consider that drawing such a distinction would be justified either as a matter of logic, policy or principle. Non-media commentators have an important role to play.

[88] As explained at [58], [64] to [68] and [104] the elements of the responsible communication defence on which all members of the Court were agreed are:

[88.1] The subject matter of the publication must be of public interest; and

[88.2] The communication must be responsible.

[89] As regards determining whether the communication was responsible, that is to be determined by the judge having regard to all the relevant circumstances of the publication.

[90] As to relevant circumstances, the Court at [67], [68] and [104] provided the following list:

> **[67]** Relevant circumstances to be taken into account may include:
>
> (a) The seriousness of the allegation – the more serious the allegation, the greater the degree of diligence to verify it.
> (b) The degree of public importance.
> (c) The urgency of the matter – did the public's need to know require the defendant to publish when it did, taking into account that news is often a perishable commodity.
> (d) The reliability of any source.
> (e) Whether comment was sought from the plaintiff and accurately reported – this was described in *Torstar* as a core factor because it speaks to the essential sense of fairness the defence is intended to promote. In most cases it is inherently unfair to publish defamatory allegations of fact without giving the target an opportunity to respond. Failure to do so also heightens the risk of inaccuracy. The target may well be able to offer relevant information beyond bare denial.
> (f) The tone of the publication.
> (g) The inclusion of defamatory statements which were not necessary to communicate on the matter of public interest.
>
> **[68]** The list of factors is not exhaustive and in some cases the circumstances may be such that not all factors in the list are relevant. In some cases, publishing defamatory allegations from an unidentified source may not be responsible. In other cases it may be responsible if for example the publisher had good reason to consider the source reliable and the article made it clear it was relying on a confidential source or sources. In short, the factors must be applied in a practical and

flexible manner with regard to the practical realities and with some deference to the editorial judgment of the publisher, particularly in cases involving professional editors and journalists.

[Footnote citations omitted]

[91] Returning to the context of the Privacy Act four points must be made:

[91.1] Reading the phrase "news activity" as "responsible news activity" introduces a limitation which is implicit in the conferral on news media of the considerable advantage of being exempted from the application of the Privacy Act in relation to that part of the business of the particular news medium that consists of a news activity. That limitation is the requirement that the exemption be exercised responsibly.

[91.2] The duty to act responsibly is recognised by the common law in the analogous field of defamation.

[91.3] The duty under the Privacy Act to act responsibly can be informed by what was said by the Court of Appeal in *Durie v Gardiner* regarding the requirements of a responsible communication.

[91.4] The concept of responsible journalism is not new and is well understood in the media field. See for example Cheer *Burrows and Cheer Media Law in New Zealand* (7th ed, LexisNexis, 2015) Chapter 14, Tobin and Harvey *New Zealand Media and Entertainment Law* (Thomson Reuters, Wellington, 2017) Chapters 11 and 12 and the Law Commission Issues Paper, *The News Media Meets 'New Media': Rights, Responsibilities and Regulation in the Digital Age*, Chapter 4. The basic elements of responsible journalism include accuracy, fairness, balance, error correction and right of reply.

Interpretation – conclusions – summary

[92] At the risk of oversimplifying the preceding discussion our primary conclusions in relation to the Privacy Act are:

[92.1] The term "news" in the Act is to be given its natural and ordinary meaning.

[92.2] The underlying statutory purpose of the news medium exemption is to protect and promote the core functions assigned to the fourth estate in a liberal democracy.

[92.3] The exemption is not all-encompassing or open-ended. The definitions of news medium and news activity while broad, are not without limit. The underlying purpose of the exemption will largely determine those limits. Publication of personal information which does not serve that purpose is not protected by the exemption.

[92.4] The privileges and exemptions of the news media under the Act are to be exercised responsibly.

[92.5] The statutory phrase "news activity" is to be understood as "news activity which is conducted responsibly".

[92.6] Where an agency publishes or disseminates personal information about an identifiable individual and claims the protection of the news medium exemption the question to be addressed is whether the publication or dissemination of **that personal information** was a news activity.

[93] It is now possible to address the blogs drafted by Mr Slater and placed by him on his Whale Oil website.

THE PARTICULAR DISCLOSURES OF MR BLOMFIELD'S PERSONAL INFORMATION

[94] The statement of claim alleges that between approximately May 2012 and October 2012 Mr Slater disclosed at least 46 documents containing personal information about Mr Blomfield. The disclosures were alleged to have been made on the Whale Oil website, on scribd.com, docshut.com and slashdocs.com. We have accepted Mr Slater's evidence that he was not responsible for the publication of the information on slashdocs.com and on docshut.com. The issues for determination relate only to the 43 documents published on Whale Oil and scribd.com.

[95] Mr Slater contends he is and was at the time a news medium whose business, or part of whose business, consists of a news activity. But in relation to the 43 documents in question the Tribunal has before it only 12 of the blogs in which Mr Blomfield's personal information was accompanied by "any article or programme of or concerning news, observations on news or current affairs". Consequently it is only in relation to those 12 blogs that the news medium defence can be considered. No defence has been raised by Mr Slater in relation to the balance of the disclosures made of Mr Blomfield's personal information.

[96] Consistent with our earlier holding it is necessary that the 12 blogs be analysed blog by blog to determine whether the particular blog comprised "news activity", or more accurately, "responsible news activity". The numbering of the headings which follow matches the" item number in the schedule to the statement of claim. The headings are the titles given by Mr Slater to his blogs. Underlined passages denote the hyperlinks which were given to the source referred to in the blog.

Item 7 – Blomfield files: the compromise, ctd

[97] In this blog a series of emails to and from Mr Blomfield or about Mr Blomfield were displayed as supposed evidence of Mr Blomfield's "dodgy arrangements" in organising his creditors' compromise. The blog itself compromised commentary by Mr Slater on the supposed "evidence":

> **BLOMFIELD FILES: THE COMPROMISE, CTD**
> by Whaleoil on May 15, 2012
>
> This morning I blogged about Matt Blomfield's dodgy arrangements in organising his creditors compromise.
>
> As a recap Matt Blomfield paid $10,000 to Time Capital prior to them being appointed, or in fact Mike Alexander appearing to introduce the two of them in an email of 18 February.
>
> Time Capital then set about consulting extensively with both Mike Alexander and Matt Blomfield about the Creditors Compromise and finally a document is issued that states that Time Capital were independently appointed despite the fact that Matt Blomfield paid them $10,000 and was

introduced to them by Mike Alexander, who is looking more compromised day by day. Remember Matt Blomfield also say he will pay more.

In this email trail below we can see that this whole arrangement was organised by Mike Alexander as a favour for a "client" ...who was "in funds". Just a few months later Matt Blomfield went under and all his companies for more than $3.5 million. But not before Mike Alexander provided a glowing reference to Stuart Alexander Limited.

Tom Wilson says he would like to help despite the later email saying it wouldn't work out...perhaps the initial $10,000 deposit helped change his mind.

[98] We do not see anything in the content of this blog which would qualify as news activity. The dissemination was not news, observations on news or current affairs. The events were not recent as at mid-2012 (the emails are dated 2010) and the subject matter not worthy of discussion or of reporting by a news medium. Furthermore, there is no evidence from Mr Slater that the allegation of "dodgy arrangements" represented a balanced and accurate representation of the circumstances relating to the creditors' compromise. To the contrary, the blog has more the resemblance of a series of allegations purportedly supported by documents cherry-picked from the ten years of archive material on the hard drive.

[99] In these circumstances we reject Mr Slater's contention that this blog of 15 May 2012 was a news activity as defined in the Privacy Act.

Item 21 – Who really ripped off KidsCan?

[100] This blog commenced with introductory remarks by Mr Slater followed by a series of emails apparently downloaded from Mr Blomfield's hard drive. These were interspersed with further commentary by Mr Slater. We reproduce only the first part of the blog:

WHO REALLY RIPPED OFF KIDSCAN?
by Whaleoil on May 3, 2012

Regular readers will recall that Hell Pizza got into a spot of bother in respect to an alleged charity called KidsCan. I blogged about it at the time based on media stories.

What I am about to reveal is the real story behind the scam at 'KidsCan and the involvement of Matt Blomfield in collusion with Stu "McMillions" McMullin to throw another director under the bus for the whole sorry issue.

I am starting the story that I will break over coming days with a exploration of the truth behind the story, a truth that so far hasn't been reported. I will also explain using emails and documents exactly why the truth never came out.

With all of these posts, I will post extracts from emails, but also the complete email trail to show true context. This has never been done by the media, and I will explain why in a separate post in coming days.

The real story begins with an email confirming arrangement made between Warren Powell (Otis) and KidsCan and Warren Powell's reply.

[101] This lengthy blog ends with the statement by Mr Slater that:

I have told this story first so that you may gain an understanding of the machinations afoot within Hell and the behaviour of Matt Blomfield. In further posts I will expose his other dealings where he tucks charities.

[102] The emails taken from the hard drive span the period 21 July 2009 to 13 August 2009 with the exception of two emails dated 19 November 2009 and 28 July 2011.

[103] We accept that an allegation concerning the scamming of a charity would potentially engage the public interest notwithstanding the time gap and that by a narrow margin the blog concerned news, observations on news or current affairs. We are satisfied Mr Slater has established the news medium exemption in relation to this blog.

Item 23 – Knowing me, knowing you – Matt Blomfield

[104] This blog commenced with a rhetorical question: Just who is Matt Blomfield? This question was followed by a large photograph of Mr Blomfield.

[105] The photograph was followed by the statement:

> Matt is a Psychopath.
>
> His pattern of behaviour fits the Textbook description.
>
> He loves the notoriety.

[106] These descriptions were followed by an email from Mr Blomfield dated 5 September 2008 which does not in any way support the extravagant allegations made by Mr Slater.

[107] Mr Slater then asserted:

> He loves extortion

After further commentary Mr Slater stated:

> He has no, and I mean NO conscience, NONE. Check out this email to his lawyer.

[108] The text of an email dated 10 December 2008 which followed does not provide support for the allegations made by Mr Slater. That email was then followed by the following additional commentary by Mr Slater:

> He is a pathological liar.
>
> He lives out his lies. Daily. And enjoys it.
>
> And he hates being ignored – Matthew John Blomfield, 37, bankrupt of Greenhithe, welcome to the disinfectant cleansing of sunlight shining into your dark, shadowy world.

[109] This blog can only be described as a calculated attack on Mr Blomfield and an extended assassination of his character. On no sensible construction can this blog be described as the dissemination to the public or any section of the public, of an article or programme of or concerning news, observations on news or current affairs.

Item 26 – Operation Kite

[110] The blog was in the following terms:

> **OPERATION KITE**
> by Whaleoil on May 4, 2012
>
> In December 2008 Matthew Blomfield's empire was about to collapse. Westpac was pressing Matt Blomfield for a large sum of money and Matt was telling them that he had some money coming in one of his companies. That company, of which he was a shareholder and director, was Infrastructure NZ Ltd.
>
> With Matt in this company was a fellow called Paul Claydon.

Paul Claydon knows a fair bit about building roads and by all accounts is good at what he does. Matt Blomfield knows a fair bit about scalping cash from businesses and almost nothing about building roads.

It isn't a surprise that they fell out. "Operation Kite" was the result of the falling out. This was how Matt Blomfield was going to pay Westpac. It is ironic that the operation is named for a illegal banking practice called Kite Flying.

To summarise Matt Blomfield in tandem with advice from his faithful lawyers, and a number of emails to Waitakere City Council conspired to steal a cheque from a PO Box, using some private investigators.

Matt, on the advice of his lawyer then tried to launder the money but was caught by a vigilant bank. The bank reversed the cheque but Matt had already removed the funds from the account leaving a substantial debt. The bank pursued Matt Blomfield legally for the outstanding negative balance in the account. Matt Blomfield vigorously opposed the actions of the Bank. Matt Blomfield ultimately lost that case once it was established that his defence had no merit

Here is the email trail for Operation Kite between Matt Blomfield and the Private Investigators.

[111] It can be seen that in this particular blog Mr Blomfield was accused of illegal banking practice, conspiracy to steal a cheque and attempted money laundering. The supposed "proof" is negligible. We are also reminded of the conclusion reached by Asher J that Mr Blomfield is not a public figure, that the claims against him have not appeared to attract significant public interest and that the blogs arise out of a situation in which Mr Blomfield was in dispute with two other persons in relation to a failed business venture. There is nothing to show Mr Slater has been driven by altruistic motives in making his unfounded allegations of criminal conduct by Mr Blomfield.

[112] There is also the fact that the events referred to in this blog allegedly occurred three and a half years earlier in December 2008.

[113] In these circumstances we do not accept that this blog comprised news activity as defined in the Privacy Act. There was no news, observations on news or current affairs. The blog comprises gratuitous allegations of criminal conduct on the part of Mr Blomfield and others, including his lawyer.

Item 28 – Ghostwriting for repeaters 101

[114] Mr Slater, having returned from a weekend duck shoot, alleged Mr Blomfield had provided information to "tame" media contacts. The blog and the email correspondence taken from Mr Blomfield's hard drive follow:

GHOSTWRITING FOR REPEATERS 101
by Whaleoil on May 8, 2012

Ok so I've had a weekend Duck Shooting, unfortunately there weren't many ducks, which meant I had a great deal of time to think about Matt Blomfield while I was freezing my tits off in the maimai.

So.....there are heaps of bad news stories about Hell Pizza, and about how Warren Powell is this mad, evil, narcissistic demagogue controlling and manipulating everyone....it makes for good copy and that is exactly what Matt Blomfield did...copy, loads of internal emails to tame and lazy journalists...like Maria Slade at the Herald on Sunday.

She emails Matt two days before a story appears saying:

Maria Slade Maria.Slade@heraldonsunday.co.nz 12/03/2010

to Matt

Hi Matt, have written a story for Sunday, so hope I don't see it anywhere tomorrow!

Cheers, M

Maria Slade
Business Editor
Herald on Sunday
+64 9 373 9342
021 214 4787

What Maia was telling Matt is that she has written a story... based on the information that Matt Blomfield sent her. What is galling about this is that the information that Matt Blomfield sent Maria Slade was confidential court documents including the summary of defence. Maria Slade had a scoop. nicely packaged and fed to her by a Hell insider so that the story could be painted about a dysfunctional company.

Two days later as promised to Matt Blomfield Maria Slade's article appears in the Herald on Sunday.

Why did Matt Blomfield do this?

slamdunk :by

00:00 / 00:17

This isn't the only story Matt Blomfield has shopped to tame media contacts, tune in for the next installment and another lazy media hack will be named as a dupe of Matt Blomfield.

[115] We do not see how correspondence dated 12 March 2010 between Mr Blomfield and a newspaper reporter from the *Herald on Sunday* can sensibly be described as comprising "news activity" in May 2012. In addition, the claim that Mr Blomfield had provided information to "tame media contacts" is not news activity as defined in the Privacy Act. It is not news, observations on news or current affairs. We find the news medium exemption is not established in relation to the disclosure of Mr Blomfield's personal information which occurred in the context of this blog.

Item 29 – Blomfield files: Free to a good home

[116] The terms of this blog follows. At the foot there was a photograph of a hard drive with a handwritten notation "Blomfield emails":

BLOMFIELD FILES: FREE TO A GOOD HOME
by Whaleoil on May 14, 2012

I have now copied all of the Blomfield Files onto a portable dive. It is just over 1 Tb of juicy dirt

Andrew Krukziener, Bruce Sheppard, Matt Blomfield, Mike Alexander, Bruce Johnson, Garry Whimp, Trevor Perry, Yuta Iguchi, Tania Iguchi/McRae, Rebecca Anderson/Blatchford/Blomfield, Roger Bowden, Stuart Gloyn, Paul "Weeman" Hinton, Glen Collins, Stu McMullin, Callum Davies, plus a famous All Black...are just some of the names of those who have aided and abetted Matt Blomfield's trail of destruction through business circles nationally.

Drugs. fraud, extortion, bullying, corruption, collusion, compromises, perjury, deception. hydraulic-ing...its all there.

This complete archive of his dodgy dealings, cover-ups and lies is available to any reputable journalist who calls. First in first served.

Probably not a good idea for Bevan Hurley, Hazel Philips, Sarah McDonald or any media flunky that bought Matt's bullshit to call.

I have taken the liberty of excluding the large amount of illegal movies and home made porn that he had collected. (yuk)

[117] This email was nothing more than an excuse for Mr Slater to assert Mr Blomfield was involved in drugs, fraud, extortion, bullying, corruption, collusion, compromises, perjury, deception and the like. He gratuitously inserted a suggestion that the hard drive also contained (originally) illegal movies and homemade porn.

[118] There was no attempt to justify the allegations. The purpose was to sensationalise the campaign being run by Mr Slater against Mr Blomfield. The personal information about Mr Blomfield contained in this blog cannot, on any view, be described as news activity within the meaning of the Privacy Act.

Item 30 – the Blomfield files: The compromise

[119] The blog read:

THE BLOMFIELD FILES: THE COMPROMISE
by Whaleoil on May 15, 2012

Matt Blomfield's house of cards was close to collapse, and his last ditch attempt to escape the reality of his nefarious business dealings was by taking a tact which is known as a "Compromise".

Matt Blomfield had to deal with a substantial number of creditors to evade personal bankruptcy. On the recommendation of Mike Alexander, Matt Blomfield engaged a company called Time Capital and a couple of fellows Tom Wilson & Steve Wilkins, or Wilkie as friends like Matt Blomfield like to call him. Matt and Time Capital are introduced in February 2010, by Mike Alexander of Knight Coldicutt as a proposed creditors trustee.

Time Capital are a little hesitant.

[120] This blog was accompanied by emails sent in February 2010 to and from Mr Blomfield, a firm of solicitors and third parties. The central allegation was that Mr Blomfield sought to evade personal bankruptcy and it was claimed the email correspondence backed up that allegation.

[121] Once again we fail to see how the allegation and the publication of Mr Blomfield's personal information comprise news activity two years after the events. The blog was neither news, observations on news or current affairs.

Item 32 – Blomfield files: Where is the vengeance money?

[122] The blog commenced as follows:

BLOMFIELD FILES: WHERE IS THE VENGEANCE MONEY?
by Whaleoil on May 31, 2012

Earlier today I busted the myth that Hoyts remain as the largest debtor of Vengeance Limited. In case you are still in doubt, this post will outline where the money went and to whom...and prove

once and for all that Garry Cecil Whimp is acting only on behalf of Matthew John Blomfield and not the creditors.

Here is a Statement of Account from Vengeance to Hoyts that shows that the amounts invoiced have been paid by Hoyts.

So where did ail the Hoyts money go?

Well it didn't go to Megan Denize from the Marketing Team. She is still on the creditors list.

It didn't go to Trinity Media Group. They are still on the creditors list.
It didn't go to Shane McKillen from VNC Cocktails/XXX Motorsport.

[123] The blog reproduced emails from third parties to Mr Blomfield as "proof" Mr Blomfield and a third party "nicked" money intended for another company's debts.

[124] In our view the emails fail by a substantial margin to provide the claimed "final proof" represented by Mr Slater. In addition there is nothing about Mr Blomfield or the email exchanges in the period from October 2009 to June 2010 which constituted "news" when disseminated by Mr Slater at the end of May 2012. The tone and content of this blog was consistent with the sustained campaign then being run by Mr Slater against Mr Blomfield as an allegedly dishonest person.

Item 33 – Blomfield files: Where is the vengeance money?

[125] This blog also dated 31 May 2012 asserted Mr Blomfield deserved time in prison. Beneath the claim was a photograph of Mr Blomfield (taken from the hard drive) which had been photo-shopped to resemble a police mugshot. The altered photograph had Mr Blomfield holding a board purportedly showing his personal details as follows:

COCKSMOKER
KNOWN ALIASES: MATJIK

[126] Not on any view could this blog be sensibly described as a news activity as defined in the Privacy Act. It is another example of the unrelenting attack on Mr Blomfield, holding him up as a figure of contempt and ridicule.

Item 34 – It's a kind of Mattjik

[127] The purpose of this blog was to further humiliate Mr Blomfield. In it Mr Slater disseminated a video (taken from the hard drive) of Mr Blomfield in a boxing ring:

IT'S A KIND OF MATTJIK
by Whaleoil on June 6, 2012

One of the more amusing things that I have found on the copy of Matt Blomfield's hard drive (able to be published) was this video of Matt "training"...actually blowing his arse out in the boxing ring.

Featuring in this video is also Joe Mansell. one of Matts' business partners in Cinderella. I will tell the story about how Matthew John Blomfield rorted $172,914.23 out of Cinderella via factoring company Scottish Pacific, also how Matt went to make Joe Mansell the fall-boy for his fraudulent practises by way of making a fabricated a fraud complaint that resulted in Joe Mansell being declared bankrupt.

Anyway, back to Matt's boxing prowess — Matt could barely complete one round, and I've plenty more rounds to come for him.

[128] In our view publication of the video had nothing at all to do with news activity. The sole purpose of publishing this personal information to the world at large was to make (once more) allegations that Mr Blomfield had been involved in criminal conduct and was a person to be held in contempt.

Item 45 – The Blomfield Files – McBreen Jenkins

[129] In this blog posted on 6 November 2014 Mr Slater stated he had received through his tip line a suggestion he examine Mr Blomfield's employment by McBreen Jenkins. The emails cover the period 2003 to 2005. The opening paragraphs of the blog were:

> **THE BLOMFIEID FILES - MCBREEN JENKINS**
> by Cameron Slater on November 6, 2014 at 1:04pm
>
> When I started shining light into the dark corners of Matthew John Blomfield's the tipline started to run hot. This message was sent thru:
>
> > Matt Blomfield — the same guy whom, when working for McBreen Jenkins — sued his employer for sexual harassment on the part of his boss. His boss, happened to be a female colleague who took the flirty bait and got caught in his trap.
> >
> > Matt has always fancied himself as a master manipulator, as I'm sure you have discovered..
> >
> > The most unfortunate aspect about Matt Blomfield's story so far is that despite the fact that he systematically and intentionally ruins lives, he is likely to continue down this path without oversight from the authorities. He will continue his seedy, criminal ways — unless...I hope you can present a case for the SFO or police to investigate.
> >
> > Keep it up, for the good of society
>
> Well, what did I do? Of course I searched all the emails & files for McBreen Jenkins and the hundreds of documents and boy did I find a nasty little can of worms. This story is to show the modus operandi of Matthew John Blomfield when he comes calling at your company. He is almost always looking for trouble, he is almost always working for someone else and he very much has an agenda that isn't good for you or your company. Matt has used this matjik MO once successfully with Hell Pizza, once with Tasman Pacific Foods successfully and was setting up to have another crack at Hell Pizza...there are others as well and as yet I haven't fully researched them.
>
> Let's look at what Matthew John Blomfield did to his employer outside of the nasty little honey trap case.
>
> After his stunning success of tucking the Tindall Foundation and the Northland Community Foundation Matt set about lining up McBreen Jenkins so that he could be the facilitator in a hostile take over by Andrew Krukziener.
>
> But not before he uses his connection with Stephen Tindall (we know how that turned out) to attempt to open some doors that normally would be closed to a sociopath like Matthew John Blomfield.

[130] At the conclusion of the blog Mr Slater asserted:

> This is a short little story but a good one about how Matthew John Blomfield once entrenched into a business or a business relationship sets about to divide, and gain from creating that division. Matt ultimately only got $2250 from Andrew Krukziener, but the emails show his pathology of operations.

[131] The emails taken from Mr Blomfield's hard drive predate the blog by some ten years and in addition the emails to and from Mr Blomfield which accompany the blog do not provide support for the allegations that Mr Blomfield is a sociopath, that his "operations" show a "pathology" and that he is always looking for trouble. We do not see how it can sensibly be argued this blog was a news activity within the meaning of the Privacy Act.

Item 44 – Matt Blomfield and his bad mattitude, ctd

[132] This blog of 6 November 2014 was as follows:

> **MATT BLOMFIELD AND HIS BAD MATTITUDE, CTD**
> by Cameron Slater on November 6, 2014 at 1:22pm
>
> In the trail of destruction that is Matt Blomfield, I found this interesting email exchange where Matt Blomfield threatens to punch the face of the Signature Homes Managing Director for daring to insist they get paid.
>
> 
>
> Remember, as I previously blogged Matt Blomfield was already on an assault charge for throwing a bailiff down a flight of stairs in April 2008.
>
> This email exchange goes some way to understanding the pathology of the psychopathy of Matt Blomfield. When confronted he resorts to false complaints, then threatening, then out right bullying, pretty much where he is heading with me. Gavin Hunt was very perspicacious when he wrote this in 2008:
>
> 
>
> And so there is. We hope that Gavin Hunt gets to read this post... He will, I'll email him the link.
>
> The only difference this time is that I know everything about Matt Blomfield and he forgets that. know his plays, I know his methods and like Gavin Hunt from Signature Homes I'm not afraid to call Matt Blomfield on his bullshit and his lies (You should see his CVs)
>
> Have a read of this... it is highly entertaining and gives you an insight into matt's deluded mind. BTW he lost against Signature Homes, despite his endless and false counter claims.

[133] This blog shares many of the characteristics of the preceding items. First, the antiquity of the events referred to (April 2008), some six years in the past. Second, the accompanying emails taken from Mr Blomfield's hard drive do not support the claim that they go some way to assist an understanding of the "pathology and psychopathy" of Mr Blomfield or the claim that when confronted, he "resorts to false complaints, then threatening, then outright bullying".

[134] It is clear from the text that the purpose of Mr Slater's blog was to warn Mr Blomfield not to take on Mr Slater. Again, there is nothing in this blog which could possibly support a claim that it was news activity as defined in the Act.

Conclusion

[135] With the one exception none of the blogs comprised news activity as defined in the Privacy Act.

[136] That exception aside, liability is to be determined in relation to the balance of the documents listed in the statement of claim but not Items 13, 16, 20 and 21. For these documents there is no news medium defence.

[137] The issue to be determined is whether in relation to the unjustified disclosure by Mr Slater of those documents Mr Slater breached information privacy principle 11 which provides:

> Principle 11
> *Limits on disclosure of personal information*
>
> An agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds,—
> (a) that the disclosure of the information is one of the purposes in connection with which the information was obtained or is directly related to the purposes in connection with which the information was obtained; or
> (b) that the source of the information is a publicly available publication and that, in the circumstances of the case, it would not be unfair or unreasonable to disclose the information; or
> (c) that the disclosure is to the individual concerned; or
> (d) that the disclosure is authorised by the individual concerned; or
> (e) that non-compliance is necessary—
> (i) to avoid prejudice to the maintenance of the law by any public sector agency, including the prevention, detection, investigation, prosecution, and punishment of offences; or
> (ii) for the enforcement of a law imposing a pecuniary penalty; or
> (iii) for the protection of the public revenue; or
> (iv) for the conduct of proceedings before any court or tribunal (being proceedings that have been commenced or are reasonably in contemplation); or
> (f) that the disclosure of the information is necessary to prevent or lessen a serious threat (as defined in section 2(1)) to—
> (i) public health or public safety; or
> (ii) the life or health of the individual concerned or another individual; or
> (fa) that the disclosure of the information is necessary to enable an intelligence and security agency to perform any of its functions; or
> (g) that the disclosure of the information is necessary to facilitate the sale or other disposition of a business as a going concern; or
> (h) that the information—
> (i) is to be used in a form in which the individual concerned is not identified; or
> (ii) is to be used for statistical or research purposes and will not be published in a form that could reasonably be expected to identify the individual concerned; or
> (i) that the disclosure of the information is in accordance with an authority granted under section 54.

WHETHER THERE HAS BEEN AN INTERFERENCE WITH PRIVACY

[138] The effect of s 85(1) of the Privacy Act is that before the Tribunal has jurisdiction to grant a remedy under that Act, the Tribunal must be satisfied on the balance of probabilities that any action of the defendant is an interference with the privacy of the plaintiff(s). The definition of what is an interference with the privacy of an individual is set out in s 66. Only subs (1) is relevant to the present case:

> **66 Interference with privacy**
>
> (1) For the purposes of this Part, an action is an interference with the privacy of an individual if, and only if,—
> (a) in relation to that individual,—
> (i) the action breaches an information privacy principle; or
> (ii) the action breaches a code of practice issued under section 63 (which relates to public registers); or
> (iia) the action breaches an information privacy principle or a code of practice as modified by an Order in Council made under section 96J; or
> (iib) the provisions of an information sharing agreement approved by an Order in Council made under section 96J have not been complied with; or

(iii) the provisions of Part 10 (which relates to information matching) have not been complied with; and

(b) in the opinion of the Commissioner or, as the case may be, the Tribunal, the action—

(i) has caused, or may cause, loss, detriment, damage, or injury to that individual; or

(ii) has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of that individual; or

(iii) has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of that individual.

[139] Applied to the facts of the case, the definition requires the Director to establish, on the balance of probabilities:

[139.1] An action of Mr Slater has breached an information privacy principle; and

[139.2] In the opinion of the Tribunal, this action

[139.2.1] has caused, or may cause, loss, detriment, damage, or injury to Mr Blomfield; or

[139.2.2] has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of Mr Blomfield; or

[139.2.3] has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of Mr Blomfield.

[140] Addressing the first requirement of s 66(1), it is not in dispute there was a breach of IPP 11 by repeated disclosure of Mr Blomfield's email correspondence, his photographs and the video of him in a boxing ring in a gym. None of the exceptions permitted by IPP 11 have been relied on by Mr Slater. There is therefore no need to address the sequential steps identified in *Geary v Accident Compensation Corporation* [2013] NZHRRT 34 at [190].

[141] As to the second requirement, the Director relies only on s 66(1)(b)(iii). We accept the evidence given by Mr Blomfield that the sustained disclosure of his personal information over a period of some six months did result in significant humiliation, significant loss of dignity and significant injury to his feelings, including:

[141.1] Feeling as if he no longer has any privacy.

[141.2] Having difficulty sleeping.

[141.3] Feelings of paranoia.

[141.4] Being anxious and worried at what further personal information might be disclosed about him by Mr Slater.

[141.5] Being concerned about his family's personal safety and needing to increase home security measures.

[141.6] Feeling that he has been unable to adequately protect his family.

[141.7] Losing confidence in himself.

[141.8] Negative effects on his business and personal relationships.

[141.9] Receiving unwelcome and offensive text messages from third persons.

[142] These consequences satisfy (to the probability standard) the requirement that Mr Blomfield experienced significant humiliation, significant loss of dignity and significant injury to his feelings as those terms were explained by the Tribunal in *Hammond v Credit Union Baywide* [2015] NZHRRT 6, (2015) 10 HRNZ 66 at [170].

[143] The causation standard was explained in *Taylor v Orcon Ltd* [2015] NZHRRT 15, (2015) 10 HRNZ 458 at [59] to [61]. We are satisfied Mr Slater's actions were a material cause of the harm inflicted on Mr Blomfield by dissemination of his personal information.

[144] We accordingly conclude that in terms of s 66(1) of the Privacy Act there has been an action of Mr Slater which was an interference with the privacy of Mr Blomfield and that that action resulted in significant humiliation, significant loss of dignity and significant injury to his feelings.

REMEDY

The remedies sought by the Director

[145] The remedies sought by the Director in the statement of claim are:

[145.1] A declaration of interference.

[145.2] An order restraining Mr Slater from further disclosing personal information about Mr Blomfield.

[145.3] Damages for humiliation, loss of dignity and injury to the feelings of Mr Blomfield.

[145.4] An order requiring Mr Slater to remove all personal information about Mr Blomfield which he (Mr Slater) has disclosed online.

[145.5] An order that Mr Slater undertake training on his obligations under the Privacy Act.

[145.6] Costs.

[146] Where the Tribunal is satisfied on the balance of probabilities that any action of the defendant is an interference with the privacy of an individual it may grant one or more of the remedies allowed by s 85 of the Act:

> **85 Powers of Human Rights Review Tribunal**
>
> (1) If, in any proceedings under section 82 or section 83, the Tribunal is satisfied on the balance of probabilities that any action of the defendant is an interference with the privacy of an individual, it may grant 1 or more of the following remedies:
> (a) a declaration that the action of the defendant is an interference with the privacy of an individual:
> (b) an order restraining the defendant from continuing or repeating the interference, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the interference, or conduct of any similar kind specified in the order:
> (c) damages in accordance with section 88:
> (d) an order that the defendant perform any acts specified in the order with a view to remedying the interference, or redressing any loss or damage suffered by the aggrieved individual as a result of the interference, or both:

(e) such other relief as the Tribunal thinks fit.

(2) In any proceedings under section 82 or section 83, the Tribunal may award such costs against the defendant as the Tribunal thinks fit, whether or not the Tribunal makes any other order, or may award costs against the plaintiff, or may decline to award costs against either party.

(3) Where the Director of Human Rights Proceedings is the plaintiff, any costs awarded against him or her shall be paid by the Privacy Commissioner, and the Privacy Commissioner shall not be entitled to be indemnified by the aggrieved individual (if any).

(4) It shall not be a defence to proceedings under section 82 or section 83 that the interference was unintentional or without negligence on the part of the defendant, but the Tribunal shall take the conduct of the defendant into account in deciding what, if any, remedy to grant.

[147] Section 88(1) relevantly provides that damages may be awarded in relation to three specific heads of damage:

88 Damages

(1) In any proceedings under section 82 or section 83, the Tribunal may award damages against the defendant for an interference with the privacy of an individual in respect of any 1 or more of the following:

(a) pecuniary loss suffered as a result of, and expenses reasonably incurred by the aggrieved individual for the purpose of, the transaction or activity out of which the interference arose:

(b) loss of any benefit, whether or not of a monetary kind, which the aggrieved individual might reasonably have been expected to obtain but for the interference:

(c) humiliation, loss of dignity, and injury to the feelings of the aggrieved individual.

In the present case the Director seeks damages under subs (1)(c) only.

The conduct of Mr Slater

[148] Addressing s 85(4), it is no defence that the interference was unintentional or without negligence on the part of the defendant but the Tribunal must take the conduct of the defendant into account in deciding what, if any remedy to grant.

[149] The blogs written by Mr Slater followed his coming into possession of Mr Blomfield's hard drive. It is not alleged Mr Slater stole the drive but it is relevant to note the finding made by Asher J at [134] that in the ordinary course of events persons do not legitimately come by the personal hard-drive and filing cabinets of other persons. Even if Mr Slater was not party to any illegality, it seems likely the information was obtained illegally by Mr Slater's sources. We respectfully agree with this finding.

[150] Having come into possession of approximately ten years' worth of Mr Blomfield's personal information Mr Slater set about rummaging through it to see what he could find. He then relentlessly attacked Mr Blomfield, exposing him to ridicule and contempt. As also found by Asher J at [129], Mr Blomfield was not a public figure and there was no evidence that he or his company were the subject of ongoing public interest.

[151] The allegations and assertions made by Mr Slater about Mr Blomfield were, as found by Asher J at [118], extreme. The relevant passage has already been referred to. For convenience it is reproduced again:

> [118] ... He accuses Mr Blomfield amongst other things of the exploitation of trust involving children, and of being involved in wrongly changing the amounts shown as donations. It is said that he ripped off a charity, that he is a psychopath and that he loves extortion, that he is a pathological liar, that he launders money, and that he is part of a network of crooks.

[152] The blogs complained of were published as part of a concerted campaign from May 2012 to October 2012, a period of six months. It is therefore difficult to find circumstances which might mitigate the remedies sought by the Director. As stated by Tugendhat J in *Law Society v Kordowski* [2011] EWHC 3185 (QB) at [133]:

> No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do. His conduct is a gross interference with the rights of the individuals he names.

[153] It is to be borne in mind, however, that the remedies prescribed by the Privacy Act do not have as their purpose the punishment of the defendant. But the circumstances of the case do explain why, subjectively, Mr Blomfield experienced humiliation, loss of dignity and injury to feelings to a significant degree. This is directly relevant to our assessment of the appropriate sum required to compensate for those forms of harm. The case vividly illustrates the information and power asymmetries which exist in cyberspace. Mr Slater ran the Whale Oil blog site, wrote the blogs, decided what personal information from the hard drive was to be cherry-picked and also encouraged user comments about Mr Blomfield. Mr Blomfield's feeling of powerlessness and humiliation were magnified by the knowledge that through Mr Slater's blog site his (Mr Blomfield's) personal and business affairs were being held up for ridicule.

Declaration

[154] While the grant of a declaration is discretionary, declaratory relief should not ordinarily be denied. See *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZLR 414 (Kós J, Ms SL Ineson and Ms PJ Davies) at [107] and [108].

[155] On the facts we see nothing that could justify the withholding from the Director of a formal declaration that Mr Slater interfered with Mr Blomfield's privacy and such declaration is accordingly made.

Restraining order

[156] Section 85(1)(b) of the Privacy Act gives the Tribunal jurisdiction to make a restraining order:

> **85 Powers of Human Rights Review Tribunal**
>
> (1) If, in any proceedings under section 82 or section 83, the Tribunal is satisfied on the balance of probabilities that any action of the defendant is an interference with the privacy of an individual, it may grant 1 or more of the following remedies:
> (a) ...
> (b) an order restraining the defendant from continuing or repeating the interference, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the interference, or conduct of any similar kind specified in the order:

[157] While Mr Slater told the Tribunal he had taken down the blogs regarding Mr Blomfield the Tribunal was disconcerted by the ease with which Mr Slater was able to retrieve certain blogs and to annex several examples to his affidavit sworn on 6 November 2014. Given this circumstance and further given the level of distrust between Mr Slater and Mr Blomfield we make an order restraining Mr Slater from continuing or repeating the interferences with Mr Blomfield's privacy, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the interferences, or conduct of any similar kind.

Take down order

[158] The primary effect of a restraining order is to bar future disclosure of personal information. This does not address the enduring nature of material already published on the internet. See by way of illustration *Google Spain SL v Agencia Española de Protección de Datos (AEPD)* (Case C-131/12) EU: C:2014:317, [2014] QB 1022 (ECJ) and *NT1 v Google LLC* [2018] EWHC 799, [2018] 3 All ER 581. As observed by Moreham and Warby (eds) in *The Law of Privacy and the Media* (3rd ed, Oxford, 2016) at [15.75]:

> One distinctive feature of online publication is that it is not a "one-off" event, but continuous. For as long as a distressing or offensive publication remains online, the distress it causes is also liable to be continuous.

[159] The enduring nature of an online publication has been likened to a tattoo. See *The Law of Privacy and the Media* at [15.02] at fn 7:

> The position today can be expressed more strongly, as it was in an article published in *The Guardian* (by Siobhain Butterworth, on 20 October 2008): "The consequences of putting information ... into the public domain are more far-reaching in a world where things you say are linked to, easily passed around and can pop up if [the subject's] name is put into a search engine by, for example, a prospective employer. The web makes a lie of the old cliché that today's newspaper pages are tomorrow's fish and chip wrapping. Nowadays ... the things ... in a newspaper are more like tattoos – they can be extremely difficult to get rid of."

[160] In the result, while we have made a restraining order against Mr Slater, such order does not necessarily address the need for proactive steps to be taken to remove Mr Blomfield's personal information from www.whaleoil.co.nz and from www.scribd.com.

[161] Section 85(1)(d) permits the Tribunal to order that:

> (d) the defendant perform any acts specified in the order with a view to remedying the interference, or redressing any loss or damage suffered by the aggrieved individual as a result of the interference, or both:

[162] We accordingly make an order that Mr Slater erase, destroy, take down and disable any personal information about Mr Matthew John Blomfield as may be on these websites. Mr Slater is to likewise erase, destroy, take down or disable any of Mr Blomfield's personal information published by Mr Slater and which may be found on any other website within Mr Slater's direction or control.

Damages for humiliation, loss of dignity and injury to feelings

[163] We turn now to s 88(1)(c), namely the assessment of damages for humiliation, loss of dignity and injury to feelings.

[164] The principles were reviewed in *Hammond v Credit Union Baywide* [2015] NZHRRT 6 (2 March 2015) at [170] and will not be repeated. It is sufficient to note that where, as here, it has been found for the purpose of s 66(1)(b)(iii) there was significant humiliation, significant loss of dignity and significant injury to the feelings of the plaintiff, it follows humiliation, loss of dignity and injury to feelings has been established for the purpose of s 88(1)(c) as this provision does not require that these forms of emotional harm be "significant".

[165] After a survey of awards for humiliation, loss of dignity and injury to feelings the decision in *Hammond* at [176] noted awards are fact-driven and vary widely. Nevertheless it is possible to recognise three bands. At the less serious end of the scale awards have

ranged upwards to $10,000. For more serious cases awards have ranged between $10,000 to about (say) $50,000. For the most serious category of cases it is contemplated awards will be in excess of $50,000. The Tribunal emphasised, however, that these bands are simply descriptive. They are not prescriptive. At most they are a rough guide.

[166] *Hammond* was itself an IPP 11 case and the award of damages for humiliation, loss of dignity and injury to feelings took into account the fact that personal information about Ms Hammond had been disclosed to her employer with the intent she be dismissed. Ms Hammond felt compelled to resign. In addition the personal information was sent to employment agencies in the Hawke's Bay area with a warning that Ms Hammond should not be employed. As a consequence Ms Hammond became unemployed for ten months. The damages for humiliation, loss of dignity and injury to feelings was $98,000.

[167] The next IPP 11 case in which an award of damages was made was *Director of Human Rights Proceedings v Crampton* [2015] NZHRRT 35. An award of $18,000 was made following the disclosure by Mr Crampton of a letter sent by some members of the executive committee (of which he was one) of a student association addressed to the president of that association giving to the president a "written warning" alleging she was not meeting certain performance standards. The letter included information about the president of a personal and sensitive nature. A copy of the warning letter was provided to a reporter from a student magazine. That magazine then published an article in print and online making reference to the warning letter and quoting an excerpt from it.

[168] More recently, in *Tapiki and Eru v New Zealand Parole Board* [2019] NZHRRT 5 the Tribunal awarded $16,000 to Ms Tapiki and $12,000 to Ms Eru following the disclosure of their address by the Parole Board in breach of IPP 11. That disclosure led to a tragic chain of events.

[169] However, none of these IPP 11 cases have any real similarity with the facts of the present case.

[170] Because damages are awarded not to punish a defendant for what he or she has done but to compensate the person aggrieved for the harm suffered, there is an inherently subjective element to the assessment of humiliation, loss of dignity and injury to feelings. See further *Hammond* at [177]. The focus in the present case is on Mr Blomfield though what Mr Slater has done is relevant to the issue of causation and to the degree of harm experienced by Mr Blomfield.

[171] On the facts there can be little doubt the humiliation, loss of dignity and injury to feelings described by Mr Blomfield were caused by Mr Slater. In legal terminology we are satisfied Mr Slater's disclosure of Mr Blomfield's personal information was a material cause of the harm suffered by Mr Blomfield. See *Taylor v Orcon* [2015] NZHRRT 15, (2015) 10 HRNZ 458 at [59] to [61].

[172] The elements which caused the most humiliation, loss of dignity and injury to feelings were:

> **[172.1]** The medium through which the personal information was published. That is, a blog site of unrestricted access and on which members of the public could (and did) add their own comment to the blogs written by Mr Slater.
>
> **[172.2]** Relentless disclosure of Mr Blomfield's personal information over a period of some six months.

[172.3] The disclosures were part of a calculated attack on Mr Blomfield and an extended assassination of his character. He was held up as a figure of contempt and ridicule. The photoshopping of his picture and the use of the boxing video are exemplars.

[172.4] The extreme nature of the allegations made by Mr Slater against Mr Blomfield and the extreme opinions expressed by Mr Slater.

[172.5] The effect on Mr Blomfield's partner. This, in turn, led to feelings on Mr Blomfield's part of being unable to adequately protect his family.

[173] In these circumstances we find this case comes within the third band identified in *Hammond*, but towards the lower end. We conclude that an appropriate sum to adequately compensate Mr Blomfield for the severe humiliation, severe loss of dignity and severe injury to feelings is $70,000.

Training order

[174] We do not propose making a training order. The events in question occurred some time ago and much has happened since then, particularly extensive litigation between Mr Slater and Mr Blomfield. We are confident that upon publication of the present decision Mr Slater will appreciate that the news medium exemption from the Privacy Act is but a limited exemption. Whether a blogger is exempt from application of the information privacy principles is a question to be determined blog by blog, item of personal information by item of personal information. Only if the particular item of personal information comes within the definition of news activity is exemption from the Privacy Act triggered in relation to that particular item.

FORMAL ORDERS

[175] For the foregoing reasons the decision of the Tribunal is that it is satisfied on the balance of probabilities that an action of Mr Slater was an interference with the privacy of Mr Blomfield and:

[175.1] A declaration is made under s 85(1)(a) of the Privacy Act 1993 that Mr Slater interfered with the privacy of Mr Blomfield by disclosing personal information about Mr Blomfield contrary to IPP 11.

[175.2] An order is made under s 85(1)(b) of the Privacy Act 1993 restraining Mr Slater from continuing or repeating the interferences with Mr Blomfield's privacy, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the interferences, or conduct of any similar kind.

[175.3] An order is made under s 85(1)(d) of the Privacy Act 1993 that Mr Slater erase, destroy, take down and disable any personal information about Mr Matthew John Blomfield as may be held on www.whaleoil.co.nz and on www.scribd.com. Mr Slater is to likewise erase, destroy, take down or disable any of Mr Blomfield's personal information published by Mr Slater and which may be found on any other website or database which is within Mr Slater's direction or control.

[175.4] Damages of $70,000 are awarded against Mr Slater under ss 85(1)(c) and 88(1)(c) of the Privacy Act 1993 for the humiliation, loss of dignity and injury to feelings experienced by Mr Blomfield.

COSTS

[176] Costs are reserved. Unless the parties are able to reach agreement on the question of costs, the following procedure is to apply:

[176.1] The Director is to file his submissions within 14 days after the date of this decision. The submissions for Mr Slater are to be filed within a further 14 days with a right of reply by the Director within 7 days after that.

[176.2] The Tribunal will then determine the issue of costs on the basis of the written submissions without any further oral hearing.

[176.3] In case it should prove necessary, we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

THE SEAL OF THE HUMAN RIGHTS REVIEW TRIBUNAL

Mr RPG Haines CNZM QC	**Ms GJ Goodwin**	**Mr RK Musuku**
Chairperson	**Member**	**Member**